

FILED

UNITED STATES DISTRICT COURT

JUN - 8 2005

DISTRICT OF SOUTH DAKOTA


CLERK

SOUTHERN DIVISION

CLIFF AMBROSE, JR.,

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CIV 04-4095

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Plaintiff,

*

*

-vs-

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ORDER

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JOHN SCHULTZ, DAVE HUNTER

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DANIEL J. NICHOLS, MARY LOU

*

JERGENSEN, BARB BOLT,

*

*

Defendants.

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Plaintiff Cliff Ambrose, Jr. ("Ambrose") has filed his pro se Amended Complaint. (Doc. 25.)

Although Ambrose listed five motions on the front page of document 25, the Court will refer to the document as the "Amended Complaint."

The Amended Complaint lists the names of the individual defendants, but Ambrose moves to proceed without their addresses. That motion will be denied. In order to effect service of the summonses and complaint on the defendants, the United States Marshal Service will need addresses. Ambrose must provide, at the very least, the addresses of each defendant's place of employment. He must include that information on the USM 285 forms which the Clerk will send to Ambrose.

Ambrose also moves to amend the original complaint to add what he calls an "ex post facto claim." That motion was granted in this Court's Order issued on May 26, 2005, and the claim is included in the Amended Complaint.

Ambrose moves to add his prison counselor as a defendant, claiming that she failed to take any action to remedy Ambrose's "illegal imprisonment." That motion will be granted.

The motion to add the State of South Dakota as a defendant will be denied again, for the same reasons specified in the May 26 Order. "[An unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another state." *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100 (1984). "This jurisdictional bar applies regardless of the nature of relief sought." *Id.* 42 U.S.C. § 1983 does not override the States' Eleventh Amendment immunity. *Id.* at 99.

Finally, Ambrose asks the Court to reconsider its denial of a court-appointed attorney. In support of his request, Ambrose states that he lives out-of-state, he has no access to South Dakota law books, he has only an eighth or ninth-grade education, and he lacks knowledge about filing a complete civil claim. "Indigent civil litigants do not have a constitutional or statutory right to appointed counsel." *Edgington v. Missouri Dep't of Corrections*, 52 F.3d 777, 780 (8th Cir. 1995). The factors relevant to evaluating a request for appointment of counsel include "the factual and legal complexity of the case, and the petitioner's ability both to investigate and to articulate his claims without court appointed counsel." *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997). Ambrose has had difficulty getting his lawsuit served because he failed to name individual defendants, but he has clearly articulated his claims and they are not factually or legally complex. Ambrose has not demonstrated the necessity for appointed counsel and his motion requesting counsel will be denied. Accordingly,

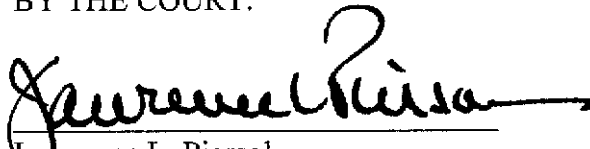
IT IS ORDERED:

- (1) That the motion to amend the original complaint to reflect ex post facto claim and the motion to add prison counselor are granted;
- (2) That the motion to add the State of South Dakota, the motion to proceed without defendants' addresses, and the motion for reconsideration for appointed attorney are denied;
- (3) That the Clerk of Court shall send to Plaintiff a Summons and USM 285 forms; and

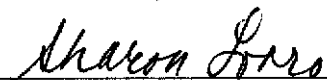
- (4) That Plaintiff shall complete the Summons and USM 285 forms, listing the names and addresses of the defendants, and then return the forms to the Clerk's Office on or before Monday, June 20, 2005;
- (5) That the Clerk of Court will issue the summons and provide to the United States Marshal the summons and copies of the Amended Complaint (doc. 25), this Order, and the May 26, 2005 Order (doc. 23) for personal service upon each defendant at government expense;
- (6) That the caption of this case shall be amended as set forth in the caption of this Order.

Dated this 1st day of June, 2005.

BY THE COURT:


Lawrence L. Piersol
Chief Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
(SEAL) DEPUTY